

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>DePuy Mitek, Inc.</b>	)	
<b>a Massachusetts Corporation</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 04-12457 PBS</b>
	)	
<b>Arthrex, Inc.</b>	)	
<b>a Delaware Corporation and</b>	)	
	)	
<b>Pearsalls Ltd.</b>	)	
<b>a Private Limited Company</b>	)	
<b>of the United Kingdom</b>		
<b>Defendants.</b>		

**DePuy Mitek’s Motion for Summary Judgment of Infringement and  
No Inequitable Conduct**

Plaintiff DePuy Mitek (“Mitek”) moves this Court, pursuant to FED. R. CIV. P. 56, for summary judgment that Defendant Arthrex, Inc. literally infringes claims 1, 2, 8, 9, and 12 of Mitek’s U.S. Patent No. 5,314,446 (“446 Patent”) by selling its FiberWire surgical suture. If the Court adopts Mitek’s proposed constructions of the claim terms “PE” and “consistently essentially of,” then summary judgment of literal infringement should be granted because there are no genuine issues of material fact with respect to the structure of Arthrex’s accused FiberWire products.

Mitek also moves this Court for summary judgment dismissal of Defendants Arthrex’s and Pearsalls Ltd.’s inequitable conduct defenses and counterclaims predicated upon those defenses. Arthrex does not allege that any prior art was withheld from the Examiner. Instead, Arthrex and Pearsalls attempt to concoct arguments that the prosecuting attorneys committed inequitable conduct by merely arguing about references

that the Examiner undisputedly considered. That is not inequitable conduct.

Accordingly, Arthrex's and Pearsalls' inequitable conduct defenses and counterclaims should be disposed of under Rule 56.

Dated: August 11, 2006

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